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Supreme Court of the United States

October Term 1939

No. 229

NEIL H. AMIOT, Guardian of Hubert S. Amiot, a mentally incompetent person, NEIL H. AMIOT, Administrator with the Will Annexed of the Estate of Hubert S. Amiot, Deceased, and H. S. AMIOT COMPANY, a Michigan corporation,

Petitioners

vs.

KANSAS CITY LIFE INSURANCE COMPANY, a Missouri corporation,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT and BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI

Neil H. Amiot, Guardian of Hubert S. Amiot, a mentally incompetent person, Neil H. Amiot, Administrator with the will annexed of the estate of Hubert S. Amiot, deceased, and H. S. Amiot Company, a Michigan corporation, by their counsel, pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Sixth Circuit entered in the above entitled cause on February 16, 1940, affirming a decree of the District Court of the United States for the Eastern District of Michigan, Southern Division.

Summary Statement of Matters Involved

The respondent, under date of November 3, 1930, issued to Hubert S. Amiot a $15,000.00, 5-year term policy of life insurance which contained a provision for its conversion, without medical re-examination, at any time after one year and within five years, into any form of life or endowment insurance, in an amount not to exceed $15,000.00, and with a choice as to the premium rate (R. 30). The conversion privilege was at the sole option of the insured and could be exercised, by performance of the following conditions:

1. Election of a form of policy and requesting the exchange after one year and within five years from the date of the policy.
2. Surrender of the original policy at the home office of the respondent at the time of making the exchange.
3. Compliance with the respondent's rule regarding occupations (R-30).

The application was made and the policy issued in Michigan, therefore, the policy is a Michigan contract and governed by Michigan law.

The payment of the premium on the policy received upon an exchange was not expressly made a condition precedent or a concurrent condition to the exchange. The Michigan statute (Section 12427 Compiled Laws of Michigan for 1929), which provides a thirty-day grace period for the payment of every premium after the first year, is deemed applicable.

The assured, Mr. Amiot, suffered a cerebral hemorrhage on November 22, 1934, and thereafter was totally incapacitated, both physically and mentally, until his death on May 7, 1937 (R-32).

The members of Mr. Amiot's family were unaware that the policy was a term policy with a right of conversion and not an ordinary life policy (R. 50-51, 72).

The H. S. Amiot Company, of which Mr. Amiot was the principal stockholder, was the beneficiary named in the policy and continued to pay the quarterly premiums thereon as they became due (R-32).

No guardian was appointed for Mr. Amiot until after the expiration of the five-year term of the policy, when the respondent returned the amount remitted by the H. S. Amiot Company in payment of a quarterly premium then thought to be due (R-34).

Neil H. Amiot was thereupon appointed special guardian and requested the exchange of the term policy for a $15,000.00 policy of ordinary life insurance, with the premium rate for Mr. Amiot's then attained age and tendered the term policy at the respondent's home office for surrender together with the amount of the premium on the policy selected. This was all done within the thirty-day grace period which the insured would have had in which to pay the premium had the exchange been made on the last day of the five-year term (R-34).

It is agreed that Mr. Amiot's occupation at all times conformed to the respondent's rules regarding occupations (R-34).

The respondent refused to issue the policy requested and declined the tender (R-34).

If the respondent had issued the policy as requested on November 25, 1935 it would have been in no other, different or worse position than if the option had been regularly exercised on the last day of the five-year term, November 2, 1935. There were, therefore, no intervening equities which would make the granting of relief inequitable.

Neil H. Amiot, as guardian of Hubert S. Amiot, filed a bill in the Circuit Court for Wayne County, Michigan in Chancery (R-11), for specific performance. The respondent removed the case to the United States District Court because of diversity of citizenship (R-19).

The insured, Hubert S. Amiot, died prior to the trial and Neil H. Amiot, Administrator of his estate and the H. S. Amiot Company, the beneficiary named in the policy, were added as parties plaintiff.

The Circuit Court of Appeals for the Sixth Circuit affirmed the decree of the District Court dismissing the plaintiffs' bill of complaint for want of grounds for equitable relief (R. 101-104).

QUESTIONS PRESENTED

First: Will the failure to elect and request a new form of policy and surrender the term policy within the time limited, be excused in equity by the total insanity of the insured, and specific performance of the convertible option be decreed, when the loss insured against by the conversion privilege in the term policy occurred, beyond question, within the specified period, and full performance was tendered within the time provided by law in which to pay the premium on the new policy, had all conditions to the exercise of the convertible option been performed on the last day of the term?

Second: Does Section 12427 of the Compiled Laws of Michigan for 1929, providing "a grace of one month for the payment of every premium after the first year", apply to a first premium on a policy which would issue in pursuance of the "Convertible Option" contained in the policy in this case?

REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

In affirming the decree of the District Court dismissing the bill of complaint, the Circuit Court has decided an important question of Michigan law in a way at least probably in conflict with the applicable Michigan decisions.

The "Convertible Option" was in itself a form of insurance. It secured Mr. Amiot against the possibility of not being able to obtain life insurance at a later date within the five-year period, because of any impairment of health which would make him uninsurable. The cost of assuming this risk was reflected in the amount of the premium payable on the term policy (R-83).

The requirement that the "Convertible Option" be exercised within the five-year period had both a substantive aspect and a procedural aspect.

It was substantive in that it limited the period of the risk assumed by the respondent company. When Mr. Amiot suffered the cerebral hemorrhage and became wholly incapacitated, he suffered the very loss insured against. Under these conditions any sane person would have exercised the conversion privilege on or before the expiration of the five-year period. But Mr. Amiot was totally insane from that time until his death and could not do so.

After the loss insured against had occurred and within the five-year term the exercise of the convertible option was wholly procedural because the exercise of the Convertible Option would not personally obligate Mr. Amiot to pay the premium on the new policy selected. It would merely give the respondent company the right to declare the new policy forfeited if the premium was not paid.

Had Mr. Amiot requested the exchange and surrendered the term policy on November 3, 1935, the last day of the five-year period, he would have been entitled to the new policy on which he would have a grace period of one month, under the Michigan statute, in which to pay the premium, because the second policy would be a continuation of the original contract, and, therefore, the first premium on the new policy would be a premium after the first year within the meaning of the statute.

See: *Aetna Life Ins. Co. vs. Dunken*, 69 Law Ed. 342; *Silliman vs. International Life Ins. Co.*, 131 Tenn. 303.

The fact that Mr. Amiot was totally insane and had no guardian made it impossible for him or his personal representative to elect a form of policy, request the exchange and surrender the term policy. No other person had a right to exercise the "Convertible Option."

A Special Guardian was appointed for Mr. Amiot and he made the election, requested the exchange, tendered the old policy for surrender and tendered the premium on the new form of policy selected, at the home office of the respondent company on November 25th, 1935. This was within the one month grace period in which the assured would have had to pay the premium had the exchange been made on the last day of the five-year term.

There was no change in Mr. Amiot's physical or mental condition between November 3rd and November 25th, 1935 which would influence a decision with respect to the exercise of the option (Findings of Fact, R-32).

The question in this case is analogous to the question presented in *Mutual Life Insurance Co. vs. Johnson*, 79 Law Ed. 398, 293 U. S. 335. There this Court held that the contract was to be interpreted in accordance with the Virginia law which was that notice, required under pain of forfeiture, to obtain the benefits of a disability premium waiver, was excused by physical and mental incapacity to give it.

The law of Michigan is the same as the law of Virginia in this respect. The Supreme Court of Michigan in the recent case of *Valisano vs. Continental Insurance Co.*, 254 Mich. 122, reiterated the doctrine laid down by that Court

in the earlier case of *Reed vs. Loyal Protective Assn.*, 161 Mich. 175, saying:

> "But we are committed to the doctrine in insurance cases, that a provision requiring notice under pain of forfeiture will not be construed to require strict performance when by plain act of God it is made impossible of performance."

This doctrine has been extended by decisions of the Supreme Court of Michigan to cover failure to comply with other procedural conditions in insurance policies, which have become impossible of performance, such as: failure to institute suit within one year; failure to obtain the official receipt of the insurer, etc.

The Circuit Court said that the asserted unconscionable hardship did not exist because a guardian could have been appointed earlier and could have effected the exchange. The record clearly shows that the family of Mr. Amiot did not know of the nature of the policy. In any event the incompetent and his estate should not be made to suffer because of the neglect of some other person which has not worked to the disadvantage of the respondent. This seems so fundamental that the question was not raised by respondent's counsel either in the District Court or in the Circuit Court of Appeals.

The Circuit Court also said that the beneficiary named in the policy, the H. S. Amiot Company, could have applied for the exchange, and therefore the asserted hardship did not exist. Here again the court makes the incompetent or his estate suffer for the neglect of another. Too, the policy did not give the beneficiary the right to make the exchange.

We believe that the Circuit Court of Appeals has decided this important question of local law in a way at least

probably not in accord with applicable local decisions, and, therefore, this petition should be granted.

Respectfully submitted,

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